

REMARKS

This is a response to the Office Action mailed September 28, 2004. Claims 1-8, 10-13, 29-32 and 45-72 are pending in the application. Claims 1-8, 10-13, 29-32 and 45-60 have been rejected by the Examiner. As noted above, Applicant has amended Claim 1, 4, 7, 45, 48, 49, 54 and 55, and submitted New Claims 61-72. The amendments and New Claims are fully supported by the written description. Also, no new matter has been introduced into the application.

Claim Objections

Claims 1 and 45 have been objected to by the Examiner. Applicant has amended Claims 1 and 45 to clarify the claim language. In particular, for Claims 1 and 45 Applicant has replaced “a first material carried by the stent containing” with “a first material including.” Although Applicant has not amended Claims 1 and 45 exactly as suggested by the Examiner, Applicant believes that the amendment addresses the Examiner’s concern regarding the claim language.

Claim Rejections - 35 U.S.C. § 102

The Examiner has rejected Claims 1-8, 10¹-13, 45, 47-50 and 54-60 under 35 U.S.C. § 102(e) as being anticipated by ten Cate (U.S. Patent Number 6,352,683). ten Cate does not disclose all of the limitations of amended Claims 1 and 45. First of all, ten Cate does not disclose a stent body and a second material configured to convert non-cytotoxic electromagnetic waves received by the second material to a second type of energy. Instead, ten Cate merely discloses a drug-carrier material that is delivered by injection or through a catheter-based intravascular delivery system. Specifically, ten Cate states that “[l]ocal intravascular administration **by means of a catheter** is a common technique in medical practice” (column 6,

¹ The Examiner has indicated that Claim 10 is rejected under Section 102 in the Office Action Summary. However, the Examiner’s comments in the Detailed Action do not list Claim 10 as rejected or otherwise address Claim 10. To the extent that the Examiner has found Claim 10 to include allowable subject matter, Applicant requests the Examiner to clearly indicate such allowability.

lines 7-9), and “carrier material 20 with the drug 22 is forced out of the balloon portion 14b through small holes.” Column 9, lines 64-66. With regard to the injection pathway, ten Cate only discloses that the particles can be delivered by intravenous injection (column 6, line 12), or an injection to the heart tissue (column 8, line 64). Finally, although ten Cate mentions “a stent in a balloon” (see column 6, line 10), this reference to a “stent” is only in passing and is only mentioned within the context of discussing catheter-based delivery. There is nothing in ten Cate that suggests that the particles would in fact be attached, be a part of, or otherwise carried by the stent found within a balloon. Considering the above, it is clear that there is nothing in ten Cate that suggests that the drug-carrier material would be carried by a stent structure.

The difference between the prior art reference and the present invention is not trivial, especially considering that the particles of ten Cate could not perform the same function as the present invention. Namely, the present invention, by having a stent body that carries the material that contains a therapeutic substance, can locally deliver the therapeutic substance (as it is released by the material) to the lumen directly in contact with the stent structure. Furthermore, the structure of the stent of the present invention can allow the stent “to be inserted into and physically uphold an anatomical passageway by exerting a radially outward-extending force against the walls or inner lumen surface of the passageway.” See specification at page 6, lines 9-11. Certainly, the particles of ten Cate are not able to physically hold open an anatomical passageway. Accordingly, Applicant respectfully requests the Examiner to allow amended Claims 1 and 45. Claims 2-8, 10-13, 47-50 and 54-60 should also be allowed because they depend on either Claim 1 or 45.

Claim Rejections - 35 U.S.C. § 103

The Examiner has rejected Claims 29, 30 and 51-53 under 35 U.S.C. §103 as being as

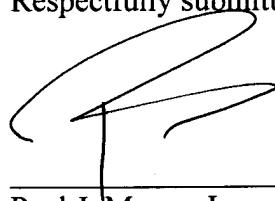
being unpatentable over ten Cate. As noted above, amended Claims 1 and 45 are allowable over ten Cate. Claims 29 and 30 depend from Claim 1. Accordingly, Claims 29 and 30 are allowable. Furthermore, Claims 51-53 depend from Claim 45 and should also be allowable.

CONCLUSION

Claims 1-8, 10-13, 29-32 and 45-72 are pending in this application. Applicant respectfully submits that the claims have been placed in condition for allowance. Applicant respectfully requests the Examiner to enter the foregoing amendments and pass the case to issue.

If the Examiner has any questions or concerns, the Examiner is invited to telephone the undersigned attorney at (415) 954-0345.

Respectfully submitted,



Paul J. Meyer, Jr.
Attorney for Applicant
Reg. No. 47,791

Date: 2/28/05
Squire, Sanders & Dempsey L.L.P.
One Maritime Plaza, Suite 300
San Francisco, CA 94111
Telephone (415) 954-0200
Facsimile (415) 393-9887